SHOOK, HARDY & BACON
TOBACCO LITIGATION UPDATE

CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

Vol. 10. No. 41 June 8, 1995

CASTANO:

The court granted plaintiffs' motion to hear on an expedited basis plaintiffs' motion to modify provisions of the stay order to permit plaintiffs to take discovery of the defendants while defendants' appeal of the class certification order is proceeding. The motion to modify the stay is scheduled to be heard on June 21. The trial court imposed the stay in an order issued on May 15.

On June 6, plaintiffs filed their response to defendants' petition for permission to file an interlocutory appeal. The Fifth Circuit Court of Appeals has not ruled on whether it will hear defendants' petition. Defendants are seeking review of the trial court's order of February 17 that granted in part plaintiffs' motion for class certification.

Castano, et al. v. AT, AB, RJR, RJRN, B&W, BATUS, PM, PMC, L&M, Ligg, Brooke Grp., Lor, Loews, UST, TI; 3/29/94; U.S.D.C., E.D., LA

MCGRAW:

On June 6, Judge Berger entered an order that reflects her rulings made during a hearing on May 3 in which she granted defendants' motion to dismiss the common law counts of the complaint, which comprises eight of the ten counts in the complaint. Judge Berger also denied plaintiff's motion to add two state agencies -- the West Virginia Department of Health and Human Services and the West Virginia Public Employees Insurance Agency -- as necessary parties. Plaintiff is the Attorney General of West Virginia.

McGraw v. AT, AB, RJR, RJRN, BAT, BATUS, B&W, PMC, PM, Ligg, L&M, Brooke, Loews, Lor, U.S.T., UST, John Middleton, CTR, TI, H&K, Kimberly-Clark, et al.; 9/20/94; Cir. Ct., WV

STATE OF FLORIDA:

On June 30, 1994, Philip Morris and several entities that conduct business in Florida filed suit in the Circuit Court of Leon County challenging the constitutionality of Florida's Third Party Liability Recovery Act, the law that is the basis of the case filed by the State of Florida against cigarette manufacturers and other affiliated companies. The Circuit Court of Leon County is scheduled to hear argument on plaintiffs' motion for summary judgment on June 16. In the motion for summary judgment, plaintiffs seek a ruling that the Third Party Liability Act violates the Florida and United States Constitutions.

State of Florida, et al. v. AT, AB, RJR, RJRN, BAT, BATUS, B&W, PMC, PM, Ligg, L&M, Brooke, Loews, Lor, U.S.T., UST, CTR, TI, H&K, Brit. Amer., Dosal; 2/22/95; Cir. Ct., FL

PRO SE ADDICTION CASE FILED IN NORTH CAROLINA:

Companies affiliated with R.J. Reynolds have been served with the complaint in a case filed on April 28 in the United States District Court for the Middle District of North Carolina. Plaintiff Paul Jensen, who had filed a similar suit against American Tobacco in federal court in Michigan in 1994, alleges he is addicted to the Camel brand of cigarettes. RJR Nabisco Holdings Corp., RJR Nabisco and RJR Nabisco Tobacco International are named as defendants in the case, as are several individuals whose identities are not clearly identified in the complaint. The complaint suggests that Mr. Jensen is incarcerated in a correctional facility in Ann Arbor, Michigan, and the unidentified individual defendants may be prison officials. It is not clear from the complaint why the action was initiated in North Carolina. Plaintiff seeks $3,000,000,000 in actual damages and an unspecified amount in punitive damages. Plaintiff filed the action pro se.

Plaintiff had sought certification of the case as a class action on behalf of individuals addicted to the Camel brand, with himself as class representative, but the court issued an order sua sponte on April 28 that denied plaintiff's request due to his pro se status.

Jensen v. RJRN Holdings, RJRN, RJRN International, et al.; 4/28/95; U.S.D.C., M.D., NC

Source: https://www.industrydocuments.ucsf.edu/docs/fsbh0005

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HULIN:

On May 31, Judge Polozola issued an order adopting the report and recommendation of Magistrate Judge Riedlinger that American's motion in limine be granted. The motion in limine sought an order that assumption of the risk is a complete defense to plaintiffs' claims.

Hulin v. AT: 1/7/86; U.S.D.C., M.D., LA

LOUISIANA LITIGATION:

On May 30, the United States District Court for the Western District of Louisiana issued an order sua sponte that schedules status conferences for June 21 in each of the tobacco product liability cases pending before it. **Gibson**, **Hutchin**, **Marks**, **Morris** and **Shedd**. In the May 30 order, the court states that it may address the setting of pre-trial schedules and trial dates at the status conferences.

Gibson v. RJR, PM; 6/20/94; U.S.D.C., W.D., LA
Hutchin v. AT, B&W; 9/17/92; U.S.D.C., W.D., LA
Marks v. PM, RJR; 9/15/92; U.S.D.C., W.D., LA
Morris v. PM; 5/20/94; U.S.D.C., W.D., LA
Shedd v. RJR; 5/20/94; U.S.D.C., W.D., LA

CONNOR:

On May 30, plaintiff voluntarily dismissed the defendants named in the complaint who had not been served: those defendants included Lorillard and Philip Morris, as well as several distributors of tobacco products. Plaintiff in **Connor** is represented by the Jacksonville, Florida, firm of Spohrer, Wilner & Maxwell.

Connor v. RJR, et al.; 3/30/95; Circuit Ct., FL

MILLER:

On May 21, plaintiffs filed an opposition to the tobacco defendants' motion to dismiss. The tobacco defendants' motion to dismiss plaintiffs' one-hundred page first amended complaint, which was filed on May 19, was based on plaintiffs' failure to state a claim. The court has not scheduled argument on the motion to dismiss.

Miller, W., et al. (pro se) v. B&W, AT, Ligg, B&W, AT, Ligg, Lor, PM, RJR, et al.: 11/10/94; U.S.D.C., E.D., PA

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM TOTALS)

JURISDICTION	INDUSTRY TOTAL	PM TOTAL
ALABAMA	2	1
CALIFORNIA	1	1
COLORADO	3	2
FLORIDA	5	3
ILLINOIS CT. OF APPEAL	1	0
INDIANA	4	4
KANSAS	1	0
LOUISIANA	16	7
MASSACHUSETTS	2	2
MINNESOTA	2	1
MISSISSIPPI	4	2
MISSISSIPPI SUPREME CT.	2	0
MISSOURI	1	0
NEVADA	1	1
NEW HAMPSHIRE SUPREME CT.	1	1
NEW JERSEY	2	1
NEW YORK	5	3
NORTH CAROLINA	1	0
OHIO	3	1
OKLAHOMA	1	1
PENNSYLVANIA	2	2
SOUTH CAROLINA	1	0
TENNESSEE	3	2
TEXAS	8	5
TEXAS SUPREME CT.	1	0
USCA, FIFTH CIRCUIT	1	1
USCA, NINTH CIRCUIT	1	0
WEST VIRGINIA	2	2
TOTAL	77	43

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
ALABAMA	Cantley	0
	Lacey	1
ALABAMA SUBTOTAL:	2	1
CALIFORNIA	Jernigan	1
CALIFORNIA SUBTOTAL:	1	1
COLORADO	Cullum-1	1
	Martinez	0
	Robinson-C	1
COLORADO SUBTOTAL:	3	2
FLORIDA	Broin	1
	Carter	0
	Chiles	1
	Connor	0
	Engle	1
FLORIDA SUBTOTAL:	5	3
ILLINOIS CT. OF APPEAL	Kueper	0
ILLINOIS CT. OF APPEAL SUBTOTAL:	1	0
INDIANA	Dunn-C	1
	Rogers-Y	1
	Smith-Ben	1
	Winters	1

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
INDIANA SUBTOTAL:	4	4
KANSAS	Burton	0
KANSAS SUBTOTAL:	1	0
LOUISIANA	Arabie	0
	Castano	1
	Chustz	0
	Gibson	1
	Gilboy	0
	Granier	1
	Hulin	0
	Hutchin	0
	Marks	1
	Miceli-1	0
	Morris	1
	Pitre	1
	Shedd	0
	Smith-E	0
	Williams-C	1
	Woodruff	0
LOUISIANA SUBTOTAL:	16	7
MASSACHUSETTS	Fahey	1
	Kearney	1
MASSACHUSETTS SUBTOTAL:	2	2
MINNESOTA	Forster	0

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
	Humphrey	1
MINNESOTA SUBTOTAL:	2	1
MISSISSIPPI	Butler-A	1
	Jacks	0
	Moore-M	1
	Nunnally	0
MISSISSIPPI SUBTOTAL:	4	2
MISSISSIPPI SUPREME CT.	Horton	0
	Wilks	0
MISSISSIPPI SUPREME CT. SUBTOTAL:	2	0
MISSOURI	Sterling	0
MISSOURI SUBTOTAL:	1	0
NEVADA	Boyer	1
NEVADA SUBTOTAL:	1	1
NEW HAMPSHIRE SUPREME CT.	Ramsey-Buckingham	1
NEW HAMPSHIRE SUPREME CT. SUBTOTAL:	1	1
NEW JERSEY	Griesenbeck	0
	Haines	1

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
NEW JERSEY SUBTOTAL:	2	1
NEW YORK	Dolan	1
	Humphries	1
	Manago	0
	McSorley	1
	Sackman	0
NEW YORK SUBTOTAL:	5	3
NORTH CAROLINA	Jensen-2	0
NORTH CAROLINA SUBTOTAL:	1	0
OHIO	Foster-T	0
	Ragland	0
	Tompkin	1
OHIO SUBTOTAL:	3	1
OKLAHOMA	Michener	1
OKLAHOMA SUBTOTAL:	1	1
PENNSYLVANIA	Hinkson	1
	Miller-W	1
PENNSYLVANIA SUBTOTAL:	2	2

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
SOUTH CAROLINA	Collins	0
SOUTH CAROLINA SUBTOTAL:	1	0
TENNESSEE	Davis-JA	1
	Gillman	1
	Huggins	0
TENNESSEE SUBTOTAL:	3	2
TEXAS	Allgood	0
	Blanchard-R	1
	Bluitt	1
	Caballero	1
	Hutson	0
	Rogers-I	1
	Shipman	1
	Switzer	0
TEXAS SUBTOTAL:	8	5
TEXAS SUPREME CT.	Grinnell	0
TEXAS SUPREME CT. SUBTOTAL:	1	0
USCA, FIFTH CIRCUIT	Brown-C	1
USCA, FIFTH CIRCUIT SUBTOTAL:	1	1
USCA, NINTH CIRCUIT	Sparks	0
USCA, NINTH CIRCUIT SUBTOTAL:	1	0

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PENDING CASES (BY JURISDICTION)

INDUSTRY (AND PM CASES)

JURISDICTION	INDUSTRY CASES	PM CASES
WEST VIRGINIA	Haight	1
	McGraw	1
WEST VIRGINIA SUBTOTAL:	2	2
TOTAL CASES PENDING:	77	43

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TOBACCO LITIGATION: CASES FILED BY QUARTER AND YEAR

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL
1982	1	1	1	2	5
1983	5	2	2	3	12
1984	3	5	4	5	17
1985	3	9	13	36	61
1986	37	21	16	11	85
1987	7	1	7	4	19
1988	9	4	1	3	17
1989	2	2	0	3	7
1990	2	1	3	0	6
1991	2	5	4	3	14
1992	2	3	12	7	24
1993	4	6	6	2	18
1994	6	15	9	6	36
1995	9	5	0	0	14
TOTAL CASES FILED					335

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TOBACCO LITIGATION: CASES DISMISSED BY QUARTER AND YEAR

YEAR	1ST QTR	2ND QTR	3RD QTR	4TH QTR	TOTAL	ACTIVE APPEALS
1982	1	1	0	1	3	0
1983	2	3	1	5	11	0
1984	1	0	0	0	1	0
1985	2	0	1	8	11	0
1986	3	3	6	3	15	0
1987	7	18	16	15	56	0
1988	12	17	9	6	44	0
1989	6	3	17	11	37	0
1990	3	4	3	4	14	1
1991	7	1	5	2	15	0
1992	7	1	2	8	18	0
1993	8	7	4	7	26	2
1994	2	5	4	5	16	3
1995	2	2	0	0	4	0
					271	6

CASES DISMISSED (NO PENDING APPEAL): 271

DISMISSED CASES ON APPEAL: 6

TOTAL DISMISSALS (IN TIME PERIOD ON CHART): 277

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DATE	CASE	PLACE	06/08/95

09-Jun-95 Tompkin

Deadline for plaintiffs to file an amended complaint.

12-Jun-95 Engle

Appellants' reply brief is due.

12-Jun-95 Chiles

Lorillard's and Loews Corp.'s answers to plaintiffs' first amended complaint are due.

12-Jun-95 Chiles

The Tobacco Institute's response to plaintiffs' complaint is due.

12-Jun-95 Miceli-1

Plaintiff's responses to the American Tobacco Company's [third] set of interrogatories and [first] requests for production of documents are due.

13-Jun-95 Broin

Plaintiffs/appellees' answer brief is due.

NOTE: Plaintiffs obtained a 20-day extension from May 24, 1995 to file their brief.

13-Jun-95 Chiles

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DATE	CASE	PLACE	06/08/95

The Council for Tobacco Research's response to plaintiffs' complaint is due.

14-Jun-95 Tompkin Place: Laybourne, Smith, Gore & Goldsmith

The deposition of Jocelyn Tompkin, plaintiff's wife, is scheduled to be taken.

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